may, notwithstanding, be committed of them, if they are fit for food of man and dead, reclaimed (and known to be so) or confined. Thus . . fish in a tank or net, or, as it seems, in any other enclosed place which is private property, and where they may be taken at any time at the pleasure of the owner . . . the taking of them with felonious intent will be larceny.' 2 RUSS. CR., 83. 'Fish confined in a tank or net are sufficiently secured.' 2 BISHOP CR. LAW, § 775.

"The trial judge seems to have directed the jury to return a verdict of 'not guilty' on the theory that the fish must have been confined so that there was absolutely no possibility of escape. We think that this doctrine is both unnecessarily technical and erroneous. For example, bees in a hive may be the subject of larceny, yet it is possible for the bees to leave the hive by the same place at which they entered. To acquire a property right in animals *feræ naturæ*, the pursuer must bring them into his power and control, and so maintain his control as to show that he does not intend to abandon them again to the world at large. When he has confined them within his own private enclosure where he may subject them to his own use at his pleasure, and maintains reasonable precautions to prevent escape, they are so impressed with his proprietorship that a felonious taking of them from his enclosure, whether trap, cage, park, net, or whatever it may be, will be larceny. For such cases, as is clearly shown by the authorities above quoted, the law does not require absolute security against the possibility of escape, and none of the authorities cited for the defendants in error, except *Norton* v. *Ladd*, 5 N. H. 203, 20 Am. Dec. 573, sustain their contention. *Young* v. *Hichens*, 6 Ad. & Ell. N. S. 606, 51 Eng. Com. L. 605, is not applicable to this case. That was an action for the conversion of fish which were never in the plaintiff's net, but had been frightened away from entering into the plaintiff's net by the defendant and caught in his own net.

"In the present case the fish were not at large in Lake Erie. They were confined in nets, from which it was not absolutely impossible for them to escape, yet it was practically so impossible; for it seems that under ordinary circumstances few, if any, of the fish escape. The fish that were taken had not escaped, and it does not appear that they would have escaped, or even that they probably would have escaped. They were so safely secured that the owners of the nets could have taken them out of the water at will, as readily as the defendants did. The possession of the owners of the nets was so complete and certain that the defendants went to the nets and raised them with absolute assurance that they could get the fish that were in them. We think, therefore, that the owners of the nets, having captured and confined the fish, had acquired such a property in them that the taking of them was larceny."

CONSTITUTIONAL LAW—COMPELLING ONE TO BE A WITNESS AGAINST HIMSELF BY COMPELLING HIM TO EXHIBIT HIS PERSON FOR THE PURPOSE OF PROCURING EVIDENCE AGAINST HIM.—This interesting question, somewhat analogous to that so fully considered by Mr. Shastid, in his recent articles, 1 MICHIGAN LAW REVIEW, pp. 193, 297, was ably discussed in an exhaustive opinion by Mr. Justice McCLAIN, of the supreme court of Iowa, in the late case of *State* v. *Height* (1902), — Iowa —, 91 N. W. Rep. 935. The defendant was charged with statutory assault upon a child, and upon the

trial, physicians who had been enabled to make, against his will, an examination of his person while he was confined in jail, were permitted to testify over his objection that he was affected with a disease with which, it was claimed, the child was found to be infected after the alleged assault. There is not in the constitution of Iowa such a provision as is found in the federal and many state constitutions, that a person shall not be compelled to be a witness against himself. There is, however, the familiar provision that no person shall be deprived of life, liberty or property without due process of law, and the court held that the general principle finding expression in the maxim, *Nemo tenetur seipsum accusare*, had become so recognized and established in our law that, notwithstanding the absence of a constitutional declaration of this specific protection, it must be deemed to be secured under the requirement of due process of law. "We are convinced," said the court, "that the principle itself is too fundamental to have been purposely omitted from the charter of liberties of the people of Iowa, and that, had there been no such specific provision anywhere, the same result would have been reached under the general guaranty of due process of law." The court then proceeded to give illustrations of the application of the principle, saying: "A constitutional guaranty against self-criminating evidence does not make it unlawful to require defendant to uncover his face or hands, or take his feet from under a chair, in the court room, for purposes of identification. *State* v. *Prudhomme*, 25 La. Ann. 523; *Johnson* v. *Commonwealth*, 115 Pa. 369, 395, 9 Atl. 78; *State* v. *Garrett*, 71 N. C. 85, 17 Am. Rep. 1; *Myers* v. *State*, 97 Ga., 76, 99, 25 S. E. 252. Some courts have gone to the extent of receiving evidence obtained by compelling defendant to 'make tracks.' *State* v, *Graham*, 75 N. C. 256; *Walker* v. *State*, 7 Tex. App. 265, 32 Am. Rep. 595. Other courts have held such evidence inadmissible. *Stokes* v. *State*, 5 Baxt. (Tenn.) 619, 30 Am. Rep. 72; *Day* v. *State*, 63 Ga. 667; *Blackwell* v. *State*, 67 Ga. 76, 44 Am. Rep. 717; *People* v. *Mead*, 50 Mich. 228, 15 N. W. 95. And see *Jordan* v. *State*, 32 Miss. 382. This court has gone no further than to sustain the right to require defendant to stand up in court for the purpose of identification. *State* v. *Reasby*, 100 Iowa 231, 69 N. W. 451. The only case sustaining the right to require disclosure of those parts of the person not usually exposed is that of *State* v. *Ah Chuey*, 14 Nev. 79, 33 Am. Rep. 530, where it was held not improper to require the exposure of the forearm to discover tattoo marks for identification, and even in this case it is said that the accused should never be compelled to make any indecent or offensive exhibition of his person for any purpose whatever. In *People* v. *McCoy*, 45 How. Prac. 216, it was held improper to receive evidence that a female defendant charged with the murder of a bastard child had, on a forcible examination of her person without her consent, been found to have been recently delivered of a child. *Blackwell* v. *State*, 67 Ga. 76, 44 Am. Rep. 717, is also in point to the effect that evidence derived from compulsory examination of the person is not admissible. The case of *People* v. *Glover*, 71 Mich. 303, 38 N. W. 874, relied on by the state, is not in point on this question, as defendant consented to the examination of his person, and voluntarily testified with reference to the subject. In *State* v. *Nordstrom*, 7 Wash. 506, 35 Pac. 382, it was held that an accused person 'cannot be compelled to exhibit those portions of his body which are usually covered, for the purpose of securing identification, or in other

ways affording evidence against him.' It would seem, therefore, that such an investigation as that made in the case before us is without authority as against defendant's objection, and the receipt of the evidence was error, on the ground that it was the result of the invasion of defendant's constitutional right, impliedly guaranteed under the provision of our constitution as to due process of law, not to criminate himself."

The court further held that the proceeding was in violation of the constitutional provision securing to the people the right "to be secure in their persons, houses, papers and effects, against unreasonable seizures and searches," and *Boyd* v. *United States*, 116 U. S. 616, 6 Sup. Ct. Rep. 524, 29 L. ed. 746, was commented and relied upon, and *Newberry* v. *Carpenter*, 107 Mich. 567, 65 N. W. 530, 31 L. R. A. 163, 61 Am. St. Rep. 346, cited with reference to the effect of similar provisions in state constitutions. Proceeding, the court said: "There are, of course, limitations as to immunity from search and seizure for the purpose of securing evidence of crime. It is well settled that, when one charged with an offense is arrested, the officers may, without further legal procedure, seize weapons with which the crime has been committed, property which has been obtained by means of a criminal act, or articles which may give a clew to the commission of the crime or identification of the criminal. *Chastang* v. *State*, 83 Ala. 29, 3 South. 304; *Bank* v. *McLeod*, 65 Iowa 665, 19 N. W. 329, 22 N. W. 919, 54 Am. Rep. 36; *Reifsnyder* v. *Lee*, 44 Iowa 101, 24 Am. Rep. 733. And the officer making such search may testify as to any facts, even though criminating, which were discovered thereby. *Starchman* v. *State*, 62 Ark. 538, 36 S. W. 940; *Shields* v. *State*, 104 Ala. 35, 16 South. 85, 53 Am. St. Rep. 17; *State* v. *Flynn*, 36 N. H. 64. But 'a party to a suit can gain nothing by virtue of violence under the pretence of process, nor will a fraudulent or unlawful use of process be sanctioned by the courts. In such cases parties will be restored to the rights and position they possessed and occupied before they were deprived thereof by the fraud, violence or abuse of legal process,' *Reifsnyder* v. *Lee*, *supra* . . . None of the exceptions recognized cover such a case as we have before us. The search was for the mere purpose of securing evidence by an invasion of the private person of the defendant, and we think there is no consideration whatever which will justify it."

ATTACHMENT JUDGMENTS—ALIAS EXECUTIONS—ABANDONMENT.—May a second execution issue on a judgment obtained in an action commenced by an attachment in which the defendant has not appeared or been personally served? A negative answer was given to this question by the supreme court of Illinois on appeal by the plaintiff from an order quashing the second writ on motion of the defendant specially appearing for that purpose. The property attached was real estate. The first execution commanded the sheriff to cause the judgments and costs to be made out of the property attached. His return to it was: "The within execution returned no part satisfied this 15th day of August, A. D. 1899." The alias, issued April 9th, 1900, was the same in form as the first, except the commencement, "We again command you." The The court said: "The practice act expressly provides for an alias summons or capias, but does not provide for a special execution, and a special execution is unknown to the common law. . . . A return of such process not satis-